

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2
Campbell v. Polk
(Osteen)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

04-2280
Dominion Coal Corp v. Gross

BLACK LUNG BENEFITS. Whether Gross's modification request was timely; whether Gross is totally disabled by pneumoconiosis.

05-1267 (L), 05-1314
Montgomery v. Anne Arundel County
(Garbis)

DELIBERATE INDIFFERENCE. Whether district court erred in dismissing all but one defendant prior to trial; whether court erred in denying county its costs.

05-1356
French v. Assurance Company
(Cacheris)

INSURANCE. Challenge to summary judgment in favor of insurance companies on commercial general liability policies for damages to residence caused by defective synthetic stucco system.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, MARCH 14, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

05-1949 (L), 05-1992 05-2033 05-2034
In re:Blackwater Sec

05-1480
Bader v. Kramer
(Hilton)

05-4284
US v. Perry J. Floyd, Jr.
(Beaty)

05-1216
Dillon-Bonaparte v. Gonzales

NATURE OF CASE

WRONGFUL DEATH. Challenge to district court's remand to state court of wrongful death claims brought by private security contractors killed in Iraq.

CUSTODIAL RIGHTS. Whether petitioner has cognizable custodial rights under German law entitling him to relief pursuant to the Hague Convention on the Civil Aspects of International Child Abduction

CRIMINAL LAW & PROCEDURE. Whether the district court erred in resentencing appellant pursuant to Fed. R. Crim. P. 35(a).

IMMIGRATION. Whether this Court lacks jurisdiction under Section 1252(a)(2)(B)(ii) to review Board's refusal to reconsider its denial of petitioner's request for a Section 1186a(c)(4) waiver.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

TUESDAY, MARCH 14, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1379

Bonilla v. Gonzales

IMMIGRATION. Whether petitioner's conviction for assault and battery against a police officer is an offense involving moral turpitude.

04-7932

Sanders v. Johnson
(Jackson)

HABEAS CORPUS. Whether Sanders was denied effective assistance of counsel due to counsel's failure to investigate and advance a motion to suppress; whether Sanders was denied due process based on the Commonwealth's failure to divulge information relating to access of his DMV records.

05-1485

Jordan v. Alternative Resource
(Chasanow)

EMPLOYMENT. Whether employee was fired for reporting a racist remark in circumstances where he reasonably believed a hostile work environment existed.

05-1449

Mann v. First Union National
(Horn)

EMPLOYMENT LAW. Whether Fed. R. Civ. P. 9(c) requires an employer to deny with particularity that the EEOC charge was timely filed; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

TUESDAY, MARCH 14, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

03-7508

US v. Hadden
(Currie)

CRIMINAL LAW & PROCEDURE. Whether district court erred in issuing an amended judgment and reimposing sentence without holding a sentencing hearing; whether appellant is entitled to benefit of Booker on appeal of that amended sentence.

05-1721

King v. American Power
(Britt)

PRODUCTS LIABILITY. Challenge to summary judgment based upon spoliation of the evidence for fire related losses attributed to defective UPS device.

05-4338

US v. Bobby Williams, Jr.
(Howard)

SENTENCING. Whether district court erred in departing downward from advisory guideline range after refusing to consider heroin sale for a sentencing enhancement.

05-1511

Williams v. Ironworkers Local 16
(Davis)

ERISA. Whether statute of limitations for claim for full pension benefits begins to run at the denial of partial retirement benefits.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

TUESDAY, MARCH 14, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2006

SC Board Dentistry v. FTC

ADMINISTRATIVE PROCEDURE. Whether appeal of Federal Trade Commission's order denying motion to dismiss on state action grounds is interlocutory.

05-1857

Holly Hill Farm v. US
(Dohnal)

AGENCY. Propriety of summary judgment in dispute over wetlands designation.

05-1256

Yashenko v. Harrah's NC Casino
(Thornburg)

FMLA. Whether employee was discharged for taking protected leave; whether tribal preferences policy was racially discriminatory.

04-7713

Farmer v. McBride
(Faber)

HABEAS CORPUS. Whether respondent waived right to challenge grant of habeas relief on Geders claim by failing to object to magistrate judge's recommendation.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

WEDNESDAY, MARCH 15, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1053

Smith v. WMATA
(Williams)

TORTS. Whether district court properly determined on remand that defendant was immune from suit.

05-1219

Barry v. Gonzales

IMMIGRATION. Whether the petitioner substantially complied with the requirements of Matter of Lozada, 19 I. & N. Dec. 637 (BIA 1988); related issues.

05-1678

Lin v. Gonzales

IMMIGRATION. Jurisdiction under the REAL ID Act to review due process challenge to finding that asylum application was untimely.

05-4111

US v. Eric Bernard Smith
(Voorhees)

CRIMINAL LAW & PROCEDURE. Multiple issues involving life sentence following jury convictions of drug conspiracy and possession with intent to distribute.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

WEDNESDAY, MARCH 15, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

04-5035 (L), 04-5129
US v. Anthony McQueen
(Hilton)

04-4580 (L), 04-4589
US v. Herbert Williams
(Currie)

04-4536
US v. Nicholas S. Griffin
(Fox)

05-1139 (L), 05-1404
Fox v. Encounters Intl
(Quarles)

NATURE OF CASE

CRIMINAL. Whether defendant should have been sentenced as an armed career offender; search and seizure; sufficiency.

SENTENCING GUIDELINES. Whether the sentence was reasonable; related issues.

CRIMINAL LAW & PROCEDURE. Whether evidence was sufficient to support Section 924(c) conviction; whether sentence violated Booker.

TORTS. Challenge to award of compensatory and punitive damages against mail order bride agency for violation of its fiduciary duties.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

WEDNESDAY, MARCH 15, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4118

US v. Wayne Shatley
(Voorhees)

CRIMINAL LAW & PROCEDURE. Whether application of sentencing enhancements without jury findings was harmless error in light of an identical alternative sentence under 18 U.S.C. Section 3553.

05-1803

TD Securities v. American High
(Anderson)

SECURITIES FRAUD. Challenges to district court's construction of "underwriter" and "public offering" under Securities Act and to its determination that defendant did not make a statement for which it could be held liable under Securities and Exchange Act.

05-1471

Delawder v. American Woodmark
(Maxwell)

TORT LIABILITY. Whether plaintiff failed to establish that workplace injury was caused by unsafe working condition in violation of state or federal safety statute, rule or regulation.

04-2526

Hazelbaker v. Stephen L. Thompson
(Keeley)

BANKRUPTCY. Whether appeal from bankruptcy court's approval of sale of oil and gas leases presents exception to mootness doctrine where appellant claims lease terminated under state law prior to bankruptcy filing.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

WEDNESDAY, MARCH 15, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1621

Pharmanetics Inc v. Aventis Pharmaceutic
(Flanagan)

CONTRACTS. Challenge to summary judgment in action alleging breach of contract, false advertising under the Lanham Act and disparagement.

04-1822

Arkansas Chronicle v. Murphy
(Ellis)

QUALIFIED IMMUNITY. Whether officers executing search warrant issued by magistrate were entitled to qualified immunity on claim for violation of Fourth Amendment rights.

05-1598

Proctor v. 7-Eleven
(Broadwater)

CIVIL. Whether district court erred in procedural and evidentiary rulings regarding action for damages to real property after gasoline contamination.

05-1504

Garcia v. Gonzales

IMMIGRATION. Whether immigrant's conviction for second degree assault under New York law is a crime of violence as defined by 18 U.S.C. Section 16(b).

PANEL V
COURTROOM FIVE
Courtroom of Judge Spencer
9:30 a.m.

WEDNESDAY, MARCH 15, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

04-4549
US v. William Moya
(Garbis)

NATURE OF CASE

REHEARING EN BANC.

THURSDAY, MARCH 16, 2006

COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:00 a.m.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-7

Thomas v. Polk
(Howard)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

03-2394

Kositphasaj v. Rosen
(Messitte)

BANKRUPTCY. Whether district court erred in dismissing as interlocutory appeal from bankruptcy court's orders.

05-1523

Francis v. Booz Allen Hamilton
(Hilton)

EMPLOYMENT. Whether the district court properly granted summary judgment on appellant's complaint filed under the Uniformed Services Employment and Reemployment Rights Act.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
Beginning at conclusion
of en banc rehearings

THURSDAY, MARCH 16, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

04-2164
Dekoladenu v. Gonzales

05-1289
Asterbadi v. Leites
(Cacheris)

05-1231
Moticka v. Weck Closure Systems
(Boyle)

NATURE OF CASE

IMMIGRATION. Whether alien who is granted voluntary departure and remains after departure date may seek an adjustment of status on a motion to reopen; other issues.

JUDGMENTS. Whether plaintiff committed a fraud on the court in obtaining a default judgment.

EMPLOYMENT LAW. Whether plaintiff was covered by Family and Medical Leave Act; retaliation under Title VII.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
Beginning at conclusion
of en banc rehearings

THURSDAY, MARCH 16, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
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(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

04-2234
Landmark Land Fla v. Palm Beach Polo Inc
(Norton)

05-1878 (L), 05-1933
Sunrise Senior v. NLRB

05-1255
Wilson v. Metropolitan Life
(Boyle)

NATURE OF CASE

REAL PROPERTY. Whether purchasers took title free and clear of contractual responsibilities under a water management permit.

LABOR RELATIONS. Whether substantial evidence supports Board's finding that company demoted and terminated employees because of their protected concerted activities.

ERISA. Whether claimant was properly denied long-term disability coverage for pre-existing condition not defined in plan.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
Beginning at conclusion
of en banc rehearings

THURSDAY, MARCH 16, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2109

Trull v. Dayco Products, LLC
(Thornburg)

ERISA. Whether collective bargaining agreements created
"vested" right to lifetime health insurance benefits;
whether claims were barred by statute of limitations.

05-1591

Trull v. Dayco Products, LLC
(Thornburg)

ERISA. Whether district court had authority under All Writs
Act to enjoin defendants' collection of premium payments
and to appoint special master to determine reasonable
payment period.

05-1811

Riggs et al v. Dayco Products, LLC
(Thornburg)

ERISA. Whether preliminary injunction governing
interpretation of health insurance coverage was barred by
res judicata or collateral estoppel; other issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
Beginning at conclusion
of en banc rehearings

THURSDAY, MARCH 16, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1341
Singleton v. Temporary Disability
(Howell)

ERISA. Whether review of claim constitutes an appeal that
tolls statute of limitations.

05-1606
Carney v. Assurance Company
(Motz)

INSURANCE. Whether faulty workmanship exclusion in
builder's risk policy excludes from coverage damage to
improperly finished wood siding.

05-1623
Ray v. CSX Transportation
(Turk)

TITLE VII. Whether plaintiff failed to show reason given
for termination was pretextual, justifying entry of
judgment as a matter of law.

PANEL V
COURTROOM FIVE
Courtroom of Judge Spencer
Beginning at conclusion
of en banc rehearings

THURSDAY, MARCH 16, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

05-2345

Gresham v. Lumbermens Mutual
(Motz)

NATURE OF CASE

ATTORNEY FEES. Whether bona fide dispute existed regarding plaintiff's entitlement to severance pay, defeating plaintiff's claim for attorney's fees under Maryland Wage Payment & Collection Act.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
2:30 p.m.

THURSDAY, MARCH 16, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

05-1804 (L), 05-1837
Arnold White v. BFI Waste Services
(Lee)

04-4630
US v. Jermaine Woodbury
(Williams)

05-1473
Fisher v. Barnhart, Comm
(Maxwell)

05-4420
US v. Jarrod Kevin Dixon
(Wooten)

NATURE OF CASE

EMPLOYMENT DISCRIMINATION. Challenges to jury verdict in favor of plaintiffs on hostile work environment claims.

CRIMINAL LAW & PROCEDURE. Whether defendant's waiver of right to appeal requires dismissal of appeal.

SOCIAL SECURITY. Entitlement to disability insurance benefits and supplemental security income.
15 mins. per side

CRIMINAL LAW & PROCEDURE. Whether government's failure to file Fed. R. Crim. P. 35(b) motion breached plea agreement.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
8:30 a.m.

FRIDAY, MARCH 17, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4474

US v. William Hurwitz
(Wexler)

CRIMINAL LAW & PROCEDURE. Legality of search, exclusion of evidence, sufficiency of jury instructions, and dismissal of juror in illegal prescription drug case.

05-4404

US v. Anthony Wayne Silver
(Britt)

SENTENCING. Whether district court erred in refusing to determine drug quantity attributable to defendant and by reducing sentence for acceptance of responsibility.

05-4187

US v. Raul C. Ramos
(Williams)

CRIMINAL LAW & PROCEDURE. Whether "cocaine base" under 21 U.S.C. Section 841(b)(1) refers only to crack or includes other forms of cocaine base, as well.

05-1269

360Networks (USA) v. Peyton
(Brinkema)

BANKRUPTCY. Challenge to asset sale and distribution of sale proceeds.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
8:30 a.m.

FRIDAY, MARCH 17, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4214

US v. Larry Leeson
(Keeley)

SENTENCING. Whether two predicate offenses, which occurred within seconds of one another, were separate for purposes of the Armed Career Criminal Act.

05-4428

US v. Uriel Moreno-Mendoza
(Tilley)

SENTENCING GUIDELINES. Whether sentence in excess of the U. S. Sentencing Guidelines Manual range was reasonable; other issues.

03-4489

US v. Nathaniel Jones III
(Bullock)

CRIMINAL LAW & PROCEDURE. Whether Jones' failure to object to facts listed in the PSR constitutes an admission of those facts under Booker.

05-4607 (L), 05-4631

US v. Larry Clyburn
(Jones)

CRIMINAL LAW & PROCEDURE. Whether district court erred in granting motion for acquittal on possession of shotgun in furtherance of drug trafficking crime; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
8:30 a.m.

FRIDAY, MARCH 17, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(03/14/2006 - 03/17/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

04-7797

Lovelace v. Lee
(Kiser)

CIVIL RIGHTS. Whether inmate's RLUIPA and Free Exercise claims for being prevented from practicing Ramadan were properly dismissed on summary judgment.

04-2208

Perdue Farms v. Travelers Cas Amer
(Nickerson)

INSURANCE. Challenge to summary judgment in favor of insured on claim for indemnification under Pension Welfare Fund Fiduciary Responsibility Insurance Policy.

05-4636

US v. Bernard H. Linney
(Chambers)

SENTENCING. Whether the district court erred in applying a leadership role enhancement based on relevant conduct.

05-4471

US v. Montes-Pineda
(Cacheris)

CRIMINAL LAW & PROCEDURE. Whether the sentence imposed was reasonable under United States v. Booker, 125 S.Ct. 738 (2005)

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
8:30 a.m.

FRIDAY, MARCH 17, 2006